MAJLIS PERBANDARAN SUBANG JAYA v. LEMBAGA RAYUAN NEGERI SELANGOR DARUL EHSAN & ANOR

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[JUDICIAL REVIEW NO: BA-25-4-01-2023]
9 JANUARY 2024

Abstract – *Adhering strictly to the stipulations of O. 53 r. 3(6) of the Rules of Court 2012 on the time period for an application for judicial review, is obligatory. The compulsory nature of these requirements is evident from the use of the term 'shall' which indicates that no exceptions are allowed unless an extension of time is formally requested and granted.*

ADMINISTRATIVE LAW: *Judicial review – Application for – Company's request for planning permission to operate elderly care centre rejected by municipal council – Company appealed to State Appeal Board – Appeal allowed – Application by municipal council for judicial review against decision of State Appeal Board – When decision communicated to municipal council – Whether application for judicial review filed out of time – Whether time-barred – Rules of Court 2012, O. 53 r. 3(6)*

LOCAL GOVERNMENT: *Local authority – Municipal council – Company's request for planning permission to operate elderly care centre rejected by municipal council – Company appealed to State Appeal Board – Appeal allowed – Application for judicial review against decision of State Appeal Board*

LIMITATION: *Cause of action – Accrual – Application for judicial review – Company's request for planning permission to operate elderly care centre rejected by municipal council – Company appealed to State Appeal Board – Appeal allowed – Application by municipal council for judicial review against decision of State Appeal Board – When decision communicated to municipal council – Whether application for judicial review filed out of time – Whether time-barred – Rules of Court 2012, O. 53 r. 3(6)*

The second respondent had requested from the applicant, for the renewal of planning permission to operate an elderly care centre, and in support of the application, submitted letters of endorsements from five neighbouring landowners. The applicant, however, was not provided with any letter of endorsement from the owner of the adjacent land; instead the applicant received a letter of objection from the said owner, opposing the second respondent's application for planning permission. While reviewing the planning permission application, the applicant found that the second respondent neglected to submit the endorsement letters from 15 other landowners. Subsequently, the applicant organised a gathering of neighbouring landowners and, during the said gathering, all attending

neighbouring landowners expressed their objections to the second respondent's planning permission. Following an examination on the matter and after certain considerations, the applicant rejected the second respondent's planning permission. This prompted the second respondent to lodge an appeal with Lembaga Rayuan Negeri Selangor Darul Ehsan ('first respondent') and the appeal was allowed; an order was issued by the first respondent to that effect. Hence, the present application for judicial review against the first respondent's decision and the said order. The second respondent raised a preliminary objection that the applicant's application for judicial review was filed out of time and hence, time-barred pursuant to O. 53 r. 3(6) of the Rules of Court 2012 ('ROC').

Held (dismissing application):

(1) Order 53 r. 3(6) of the ROC clearly states that an application for judicial review shall be made promptly and, in any event, within three months from the date when the grounds of application first arose or when the decision was first communicated to the applicant. The order was communicated to the applicant in the presence of the applicant's representative and the deponent for the applicant's affidavit, preceding the formal service of the order on 21 August 2022. Consequently, the timeline for filing the application for judicial review commenced on 12 August 2022, with the deadline set for 12 January 2023. Regrettably, the applicant filed the application beyond the stipulated time, *ie*, 18 January 2023, without seeking leave for an extension of time, as mandated by O. 53 r. 3(7) of the ROC. Therefore, the court lacked jurisdiction to entertain the applicant's application for judicial review. The application was time-barred. (paras 27, 34 & 35)

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC ***(refd)***

Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal [2012] 2 CLJ 165 CA ***(refd)***

Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861 FC ***(refd)***

Mersing Omnibus Co Sdn Bhd v. The Minister Of Labour & Manpower & Anor [1983] 2 CLJ 7; [1983] CLJ (Rep) 266 FC ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 53 r. 3(6), (7)

For the applicant - Manpal Singh Sachdev & Mastura Omar; M/s Manjit Singh Sachdev, Mohammad Radzi & Partners

For the respondents - Manoharan Malayalam & Anis Salihah Abdul Malek; M/s M Manoharan & Co

Reported by Najib Tamby

JUDGMENT

Shahnaz Sulaiman J:

Introduction

[1] This application for judicial review pertains to the application of the second respondent to renew a planning permission to operate an elderly care centre known as the Noble Home Care Services Sdn Bhd at No 1, Jalan USJ 18/3, Subang Jaya, Mukim Damansara, Daerah Petaling, Selangor Darul Ehsan.

Reliefs Sought

[2] The applicant is seeking the following reliefs in this application for judicial review:

> 2. Bahawa pemohon diberi suatu perintah *certiorari* untuk mengakas dan/atau mengenepikan keseluruhan keputusan/perintah responden pertama bertarikh 12.10.2022 tersebut yang telah diterima oleh pemohon pada 21.10.2022 dan yang telah memutuskan bahawa:
>
> (a) Rayuan (oleh responden kedua) hendaklah dibenarkan dan Penolakan Kebenaran Merancang seperti di Borang C(2) 15.02.2022 (oleh pemohon) hendaklah diakaskan dan digantikan dengan Kebenaran Merancang sehingga 31.12.2024; dan
>
> (b) Pihak perayu (iaitu responden kedua di sini) perlu mematuhi syarat-syarat yang akan ditetapkan oleh responden (iaitu pemohon di sini);
>
> (c) Tidak ada perintah kos;
>
> 3. Bahawa kos permohonan ini serta kos-kos yang berbangkit akibat daripada permohonan ini dibayar oleh responden kedua kepada pemohon; dan/atau
>
> 4. Perintah-perintah dan/atau relif-relif yang didapati adil dan suaimanfaat di dalam keadaannya oleh mahkamah yang Mulia ini.

Factual Background

[3] The background facts are garnered from the applicant's affidavit in support dated 17 January 2023 and the exhibits thereto.

[4] This matter pertains to a request made by the second respondent for the renewal of planning permission (Form C(1)), hereinafter referred to as "the application", to operate an elderly care centre named "Noble Home Care Services Sdn Bhd" at No 1, Jalan USJ 18/3 Subang Jaya, Mukim Damansara, Daerah Petaling, Selangor Darul Ehsan.

[5] The second respondent submitted "Surat-surat Sokongan Jiran Untuk Membuat Perubahan Material Kegunaan Bangunan Daripada Kediaman Kepada Pusat Jagaan Warga Emas" to the applicant for the following landowners:

No.	Name & No. K/P/Passport	Address	Decision
1.	Junaidarsuad (DR1914062)	No. 5, Jalan 18/3 USJ 18 Subang Jaya	No Objection
2.	Norashikin binti Talib (660831-05-5656)	No. 9, Jalan 18/3 USJ 18 Subang Jaya	No Objection
3.	Adrien Lee (920708-10-6209)	No. 11, Jalan 18/3 USJ 18 Subang Jaya	No Objection
4.	Chan Kuo Jin (951209-14-5993)	No. 1, Jalan 18/3 USJ 18 Subang Jaya	No Objection
5.	Nvinderjit Singh (590413-10-6595)	No. 5, Jalan 18/3 USJ 18 Subang Jaya	No Objection

[6] Nevertheless, the applicant was not provided with any letter of endorsement from the owner of the adjacent land, namely Wong Kim Fatt, residing at No. 3, Jalan USJ 18/3. Instead, the applicant received a letter of objection dated 6 February 2022 from the said owner, opposing the second respondent's application for planning permission, citing the following reasons:

(i) the buildings within the residential zone are unsuitable for commercial activities, and there is suspicion that the second respondent may be operating without the necessary planning permission for the conversion of land use from residential to commercial;

(ii) no permission from MBSJ was obtained for the additional alteration and/or renovation of the building from two houses into one plot;

(iii) the additional alteration of the building will affect the fire safety, traffic flow, the environment, cleanliness of waste and foul smell;

(iv) the operation of the elderly care centre has caused traffic jam within the residential area;

(v) car parking area is full with visitors' cars of the elderly care centre;

(vi) the presence of visitors to the elderly care centre is impacting the safety and harmony of the neighbouring residents, as these visitors are outsiders who have not undergone registration as mandated by the residents;

(vii) the second respondent has, for the past five years since their establishment, declined or neglected to remit the membership fees to RA USJ 18; and

(viii) occasionally, visitors engage in disputes with residents concerning issues such as traffic, parking, noise disturbances, and the like.

The letter of objection from Wong Kim Fatt dated 6 January 2022 is exh. "RR3".

[7] Consequently, while reviewing the planning permission application submitted by the second respondent, the applicant found that the second respondent had neglected to submit the "Surat-surat Sokongan Jiran Untuk Membuat Perubahan Material Kegunaan Bangunan Daripada Kediaman Kepada Pusat Jagaan Warga Emas" for the addresses listed below:

1.	No. 3, Jalan USJ 18/3
2.	No. 7, Jalan USJ 18/3
3.	No. 26, Jalan USJ 18/2A
4.	No. 22A, Jalan USJ 18/2A
5.	No. 22, Jalan USJ 18/2A
6.	No. 20, Jalan USJ 18/2A
7.	No. 18, Jalan USJ 18/2A
8.	No. 16, Jalan USJ 18/2A
9.	No. 12A, Jalan USJ 18/2A
10.	No. 12, Jalan USJ 18/2A
11.	No. 10, Jalan USJ 18/2A
12.	No. 8, Jalan USJ 18/2A
13.	No. 6, Jalan USJ 18/2A
14.	No. 2A, Jalan USJ 18/2A
15.	No. 2, Jalan USJ 18/2A

[8] The applicant organised a gathering of neighbouring landowners on 8 February 2022 at 10am in Meeting Room 1, Level 2, Majlis Bandaraya Subang Jaya. All attending neighbouring landowners expressed objections to the second respondent's planning permission application during the meeting.

[9] Following the examination and consideration in accordance with Jadual 4.14 Klarifikasi Perubahan Material Bangunan, Rancangan Tempatan Subang Jaya 2035 (Penggantian), and Garis Panduan Perancangan Fizikal Bagi Warga Emas (GP031-A) 2018, the applicant rejected the second respondent's planning permission application through Form C(2) issued on 15 February 2022.

[10] Subsequently, on 18 March 2022, the second respondent lodged an appeal with the first respondent contesting the aforementioned rejection. Following a hearing on 12 October 2022, the first respondent, among other decisions, opted to grant approval to the second respondent's appeal and issued the following orders ("the order"):

> (a) Rayuan (oleh responden kedua) hendaklah dibenarkan dan Penolakan Kebenaran Meranancang seperti di Borang C(2) 15.02.2022 (oleh pemohon) hendaklah diakaskan dan digantikan dengan Kebenaran Merancang sehingga 31.12.2024; dan
>
> (b) Pihak perayu (iaitu responden kedua di sini) perlu mematuhi syarat-syarat yang akan ditetapkan oleh responden (iaitu pemohon di sini); dan
>
> (c) Tidak ada perintah kos;

[11] The applicant received a copy of the order dated 12 October 2022 issued by the first respondent on 21 October 2022.

[12] Consequently, the applicant filed an application to obtain leave for judicial review against the said first respondent's decision and the order dated 12 October 2022.

Principles Relating To Judicial Review

[13] Prior to considering and analysing this application, it would be prudent for this court to reflect on the legal principles relating to judicial review. Order 53 of the Rules of Court 2012 provides for the procedures for an application for judicial review.

[14] It is trite that the decision of a public authority may be reviewed by this court on the grounds of illegality, irrationality, procedural impropriety or disproportionality. This review is not confined to the decision-making process but also to the merits of the decision.

[15] In the Federal Court case, *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513; [2018] 2 MLJ 537, the liberal approach on judicial review in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 has been re-emphasised at pp. 547 to 548 (CLJ); pp. 571 to 572 (MLJ) as follows:

> [45] In the same appeal, Edgar Joseph Jr FCJ (Eusoff Chin in agreement) said that an award could be reviewed for substance as well as for process:
>
> It is often said that judicial review is concerned not with the decision but the decision making process. (See *eg Chief Constable of North Wales Police v. Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
>
> But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open a challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.
>
> In this context, it is useful to note how Lord Diplock (at pp. 410-411) defined the three grounds of review, *to wit*, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:
>
> By 'illegality' as a ground for Judicial Review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
>
> By 'irrationality', I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14, or irrationality as

A a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

[16] Further, the meaning of error of law has also been explained in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317 in the following words:

Is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed *Anisminic* error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

[17] Founded on these principles, this court will consider this application for judicial review.

Preliminary Objection

[18] At the onset, the second respondent had raised a preliminary objection to this application for judicial review. The second respondent's preliminary objection is that this application for judicial review is filed out of time and hence, time barred.

[19] In this regard, the second respondent cited O. 53 r. 3(6) of the Rules of Court 2012 which reads:

53. 3(6) An application for judicial review shall *be made promptly* and in any event *within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.* (emphasis added)

[20] This provision states that an application for judicial review shall be made promptly and, in any event, within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

[21] The second respondent contends that the applicant in this application had been communicated of the decision of the chairman of the first respondent on 12 October 2022 as per the order:

> Rayuan ini yang ditetapkan untuk pendengaran hari ini dengan kehadiran Dr. Ejaz Ahmad Chaudhry, Dr. Sara Ejaz dan Pn. Juriah bt. Yazid bagi pihak Perayu DAN Pn. Fathin Nadhira Bt. Kamarudin, Pegawai Undang-undang dan En Hazman Bin Mahayudin Pegawai Perancang Bandar bagi pihak Responden …

[22] According to the second respondent, the three months' time period would begin from the date 12 October 2022. In this application for judicial review, the application was filed on 18 January 2023. In the event that the date the decision is communicated is 12 October 2022, three months calculated from that date would be 12 January 2023. Hence, the second respondent argued that the filing of this application for judicial review on 18 January 2023 is out of time. As there is no application for an extension of time before this court to consider, the second respondent argues that this application is time-barred.

[23] In support of this contention, the second respondent cited the case of *Mersing Omnibus Co Sdn Bhd v. The Minister Of Labour & Manpower & Anor* [1983] 2 CLJ 7; [1983] CLJ (Rep) 266 as reproduced below:

> Leave should not have been granted to the appellant to apply for *certiorari* without the time prescribed in O. 53 r. 1A and neither sought an extension of time nor accounted for the delay to the satisfaction of the learned Judge within its explicit requirements. The learned Judge had no jurisdiction to do so.

[24] The applicant argues that the date to file this application runs from the date the decision was communicated to the applicant, which is 21 October 2022, as per the stamp of acknowledgment receipt of the Form H dated 19 October 2022 attaching the order.

[25] The second respondent rejects the applicant's assertion, contending that the applicant has not successfully refuted the claim that both the applicant and the deponent for the applicant were present when the first respondent made the decision on 12 October 2022.

[26] In order to consider the preliminary objection by the second respondent, it is essential for this court to determine when the decision was communicated to the applicant. Was the date 12 October 2022 by the chairman of the first respondent? Or was the date 21 October 2022 as per the stamp of acknowledgment receipt of the Form H dated 19 October 2022 attaching the order?

[27] Order 53 r. 3(6) of the Rules of Court 2012 clearly states an application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

[28] When was the decision first communicated to the applicant in this case? The chairman of the first respondent had, on 12 October 2022, delivered the decision of the first respondent in the presence of Puan Fathin Nadhira binti Kamarudin, pegawai undang-undang dan En Hazman bin Mahayudin pegawai perancang bandar for the applicant.

[29] In the affidavit in support of this application for judicial review in encl. 2, the deponent, Encik Hazman bin Mahayudin, had averred at para. 5.14 as follows:

> 5.14 Kemudian, pada atau sekitar 12.10.2022, responden pertama telah memperdengarkan rayuan responden kedua tersebut, dan antara lain, telah membuat keputusan-keputusan berikut:
>
> (a) Rayuan (oleh responden kedua) hendaklah dibenarkan dan Penolakan Kebenaran Meranancang seperti di Borang C(2) 15.02.2022 (oleh pemohon) hendaklah diakaskan dan digantikan dengan Kebenaran Merancang sehingga 31.12.2024; dan
>
> (b) Pihak perayu (iaitu responden kedua di sini) perlu mematuhi syarat-syarat yang akan ditetapkan oleh responden (iaitu pemohon di sini);
>
> (c) Tidak ada perintah kos;
>
> Sesalinan perintah bertarikh 12.10.2022 tersebut adalah dikemukakan di sini dan ditandakan sebagai ekshibit "RR-11".

[30] According to Encik Hazman, the decision was communicated to the applicant on 21 October 2022. However, based on para. 5.14 of encl. 2 as reproduced above, it is clear that Encik Hazman was present at the hearing and the decision of the chairman of the first respondent.

[31] This would entail that the decision would have been made known to the applicant through the presence of Encik Hazman at the hearing of the appeal on 12 October 2022. Consequently, this would mean this application, which was filed on 18 January 2023, is time-barred.

[32] It is a well-established legal principle that adhering strictly to the stipulations of O. 53 r. 3(6) of the Rules of Court 2012 is obligatory. The compulsory nature of these requirements is evident from the use of the term "shall", indicating that no exceptions are allowed unless an extension of time is formally requested and granted.

[33] In *Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861, the court stated the following pertaining to the time period for filing of a judicial review application:

> [119] Order 53 of the RHC 1980 sets out a specific procedure for an applicant to comply with in order to enable him to invoke the judicial review proceedings. When such explicit procedure is created, then as a general rule all applicants for such relief must adhere to the procedure, failing which the application would not be entertained by the court. In the present case, there was clear non-compliance by the appellant with the imperative requirement of time set under O. 53 r. 3(6) of the RHC 1980.
>
> [120] It is trite law, that strict compliance with the requirements of O. 53 r. 3(6) of the RHC 1980 is mandatory. The mandatory nature of the requirements is clearly reflected in the usage of the word "shall" therein, which means that there can be no exceptions unless an extension of time has been applied for and obtained.

[34] Applying the precedent mentioned to the current application the order was communicated to the applicant on 12 October 2022 in the presence of the applicant's representative and the deponent for the applicant's affidavit, preceding the formal service of the order on 21 October 2022. Consequently, the timeline for filing the application for judicial review commenced on 12 October 2022, with the deadline set for 12 January 2023. Regrettably, the applicant in this instance filed the application beyond the stipulated time, specifically on 18 January 2023, without seeking leave for an extension of time from this court, as mandated by O. 53 r. 3(7) of the Rules of Court 2012. This court, therefore, lacks jurisdiction to entertain the applicant's application for judicial review. See also in the Court of Appeal case of *Jitender Singh Pagar Singh & Ors v. Pentadbir Tanah Wilayah Persekutuan & Another Appeal* [2012] 2 CLJ 165.

Conclusion

[35] This court is satisfied that the decision of the first respondent was communicated to the applicant on 12 October 2022. Therefore, this court agrees with the contention of the second respondent that this application for judicial review should have been filed by 12 January 2023 at the very latest. As this application for judicial review was filed on 18 January 2023, it follows, therefore, that this application is time-barred and should be dismissed.

[36] This application is, therefore, dismissed with no order as to costs.